

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROBERT L. AVERY,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-18-907-SLP
)	
COMMISSIONER OF THE SOCIAL)	
SECURITY ADMINISTRATION,)	
)	
Defendant.)	

ORDER


Before the Court is Plaintiff's Motion for Attorney Fees under 42 U.S.C. § 406(b) [Doc. No. 34].¹ It is at issue. *See* Errata, Doc. No. 35; Resp., Doc. No. 36. Plaintiff's counsel seeks an award of \$23,766.90 under the Social Security Act, 42 U.S.C. § 406(b)—to be paid out of the benefits award that now has been made to Plaintiff. Defendant does not take a position in favor of or against Plaintiff's request. Based on the contractual agreement reached between Plaintiff and his counsel prior to commencement of this lawsuit (*see* Employment Contract – Federal Court Work, Doc. No. 34-1), the Court finds that an award of attorneys' fees in this case under § 406(b) is appropriate. The amount to be paid to Plaintiff's counsel—\$23,766.90—does not exceed 25% of the past-due benefits awarded to Plaintiff (i.e., of \$95,067.60). Moreover, the Court finds the amount reasonable

¹ Plaintiff filed a corrected version of his motion at Document No. 35-1, which the Court considers a substitution for Plaintiff's original filing at Document No. 34. The Court considers the corrected version of Plaintiff's motion herein.

in the circumstances of this case (including the type of case and the results achieved) and under the standard identified in *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney Fees under 42 U.S.C. § 406(b) [Doc. No. 34] is GRANTED, and attorneys' fees are awarded in the amount of \$23,766.90 pursuant to § 406(b). Defendant is ordered to make the payment to Plaintiff's counsel—Katherine Hohn Boettcher. Plaintiff's counsel promptly shall refund to Plaintiff the smaller award as between that included in this order and that included in the Court's Order of March 23, 2020 [Doc. No. 32] upon Plaintiff's counsel's receipt of such payments from Defendant. *See Weakley v. Bowen*, 803 F.2d 575 (10th Cir. 1986).

IT IS SO ORDERED this 29th day of May, 2020.



SCOTT L. PALK
UNITED STATES DISTRICT JUDGE